

Opinion
of the
District Attorney
on the use of
School Houses
as a
Civic Center

See School Law, Page 78

Santa Rosa, Calif., Jan. 19, 1914.

Miss Florence M. Barnes,
County Superintendent of Schools,
Santa Rosa, California.

Dear Miss Barnes:

I received yours of recent date requesting an opinion of this office as to the powers and limitations of trustees in permitting the use of public school houses as "civic centers" and as to the responsibility of the district for the expense of a janitor, light, fuel and other incidental expenses incurred by such use of the school house.

The Act passed by the last legislature declares that "each and every public school house" is a "civic center" where the citizens "may engage in supervised recreational activities and where they may meet and discuss, from time to time, as they may desire, any and all

subjects and questions which, in their judgment, may appertain to educational, political, economic, artistic and moral interests of the citizens of the respective communities in which they may reside; provided, that such use of said public school house and grounds for said meetings shall in no wise interfere with such use and occupancy of said public school house'', as may be required for the purpose of said public schools.

It is further provided that "lighting, heating, janitor service and the service of a special supervising officer, when needed, in connection with such use of public school buildings" * * * "shall be provided for out of the county or special school funds of the respective school districts". * * * "Such use" * * * "shall be granted free", except where an entertainment is given for which an admission fee is charged, a charge may be made for the use of the building.

The Board of Trustees have the management, direction and control of the civic center, and are given power to make all needful rules and regulations for conducting said civic center meetings and are further authorized to appoint a special officer to have charge of, preserve order and protect the school property during the use thereof as a civic center.

Broadly speaking, the law gives the citizens the right to use the school house, whether the trustees approve of such use or not. The citizens are authorized to use the school house "from time to time, as they may desire". The use is limited to the broad purposes above mentioned, and whether or not the use desired by the citizens is within the purposes for which it is to be used as a civic center, is by the law a question for the "judgment" of such citizens.

Practically every social purpose for which human beings may congregate as

bodies might be interpreted as being within the meaning of this language.

The expense of lighting, heating, janitor service and of a special officer, when the trustees deem such officer necessary, must, under the terms of the law, be paid by the district.

While this Act has not been construed by the Courts, I understand it would be subject to certain limitations. In the first place, a school house is intended primarily for school purposes and the civic center must yield to the needs of the school. The use of the building for school purposes to the exclusion of its use as a civic center at the same time is permitted.

In case the district has not sufficient funds to provide necessary lighting, heating and janitor service and the service of a special officer, if required, the civic center meetings are to be sacrificed in preference to the use of the building for school purposes. That rule would

apply at present where the funds are not sufficient. But hereafter it will be the duty of the district to provide funds for that purpose the same as for school purposes. A law making it the duty of a public official to perform a certain duty and for doing which necessary funds are not provided, is not guilty of a breach of duty in failing to perform such duty.

The trustees may make "needful rules and regulations". But it would seem, as the citizens have the right to use the building "from time to time as they may desire", that the trustees would not have the right to limit the extent of the use, other than by the necessities of the school. But where there are demands for the use of the building for more dates than are open, trustees would have the power to decide who shall use the building at times when more than one body of citizens were claiming the use. Their power to decide such question involves the exercise of reasonable dis-

cretion on their part. The grant of a power to public officials carries with it an exercise of discretion which power is to be justly and reasonably exercised and the officer is not responsible for a mistake in judgment in the exercise of such power, but only for an abuse thereof.

I believe that the trustees have a right to with-hold the use of the school building as a civic center, unless requested by a sufficient number that it may fairly be said that such use is by the citizens of the community as distinguished from a mere gathering of a few individuals for private purposes.

The trustees would have a right to make any reasonable regulation to preserve order and to protect the property of the district and to preserve peace at such meetings. The only use of the building as a civic center for which the trustees have a right to require the payment of expenses or fees as a condition

for the use of the building, is where an entertainment is to be given for which an admission fee will be charged. However, as before suggested, if the district had not sufficient funds to pay such expenses and fees, the trustees could refuse to pay such expenses, and the citizens desiring the use of the building, upon providing such fees and expenses, would be entitled to the use of the building, subject to the limitations above mentioned.

Respectfully submitted,

CLARENCE F. LEA,
District Attorney.